

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 CATALINA ARAMBURO LIZARRAGA,
5

6 Plaintiff,

7 vs.

8 BUFFALO WILD WINGS, INC., *et al.*,

9 Defendants.

2:15-cv-01655-MMD-VCF

ORDER

10 Before the court is the parties' proposed Stipulated Protective Order (#16), which the court
11 approves with the exception of Paragraph 6(e). This order reminds counsel that there is a presumption of
12 public access to judicial files and records.

13
14 In the event that counsel files or lodges with the Court any Confidential Information, all
15 documents attaching, quoting from, or otherwise revealing the content of Confidential
16 Information shall be filed under seal in accordance with Local Rule 10-5 [and the Ninth
17 Circuit decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
18 2006)], or as otherwise required by the Court.

19 A party seeking to file a confidential document or utilize a confidential document at trial must
20 comply with the Ninth Circuit's directives in *Kamakana*:

21 Unless a particular court record is one "traditionally kept secret," a "strong presumption in
22 favor of access" is the starting point. ... A party seeking to seal a judicial record then bears
23 the burden of overcoming this strong presumption by meeting the "compelling reasons"
24 standard. ... that is, the party must "articulate[] compelling reasons supported by specific
25 factual findings," that outweigh the general history of access and the public policies
favoring disclosure. ¶ In general, "compelling reasons" sufficient to outweigh the public's
interest in disclosure and justify sealing court records exist when such "court files might
have become a vehicle for improper purposes," such as the use of records to gratify private
spite, promote public scandal, circulate libelous statements, or release trade secrets. ... The
mere fact that the production of records may lead to a litigant's embarrassment,
incrimination, or exposure to further litigation will not, without more, compel the court to
seal its records.

1 *Id.* at 1178-79 (citations omitted).

2 To justify the sealing of discovery materials attached to non-dispositive motions, a particularized
3 showing of good cause is required. *Id.* at 1180. To justify the sealing of discovery materials attached to
4 dispositive motions or used at trial, however, a higher threshold is required: a particularized showing that
5 compelling reasons support secrecy. *Id.* “A ‘good cause’ showing will not, without more, satisfy a
6 ‘compelling reasons’ test.” *Id.* When private discovery materials are attached to a dispositive motion (or
7 response or reply) or used at trial, such materials become a part of a judicial record, and as such “are public
8 documents almost by definition, and the public is entitled to access by default.” *Id.*

9 ACCORDINGLY, and for good cause shown,

10 IT IS ORDERED that:

11 1. The parties’ Stipulated Protective Order regarding Disclosure of Confidential Information
12 (#28), which the court approves with the exception of Paragraph 6(e), as modified and signed by the court,
13 is GRANTED.

14 2. The parties must comply with the requirements of Local Rule 10-5(b) and the Ninth
15 Circuit’s decision in *Kamakana*, 447 F.3d 1172, with respect to any documents filed under seal or used at
16 trial.

17 DATED this 19th day of February, 2016.

18
19 

20 CAM FERENBACH
21 UNITED STATES MAGISTRATE JUDGE
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25

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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

CATALINA ARAMBURO LIZARRAGA) CASE NO. 2:15-cv-01655-MMD-VCF

Plaintiff,

vs.

BUFFALO WILD WINGS, INC.,
 BUFFALO WILD WINGS
 GRILL & BAR, BLAZIN WINGS, INC.,
 DOE OWNER, I-V, DOE EMPLOYEE,
 DOE MAINTENANCE EMPLOYEE,
 ROE OWNER, ROE EMPLOYER,
 ROE COMPANIES, I-V,
 ROE RESTAURANT COMPANY,
 ROE CHAIR MANUFACTURER,
 ROE MAINTENANCE COMPANY,
 ROE WHOLESALER, ROE RETAILER,
 AND ROE DISTRIBUTOR,

Defendants.

**STIPULATION FOR ENTRY OF A
 PROTECTIVE ORDER**

The parties stipulate to the entry of a protective order containing the following language:

1. The parties may designate as "Confidential Business Material," in the manner set forth

1 in paragraph 2, any document, deposition testimony, information, or other material sought to be
2 discovered. The terms of this Stipulation for a Protective Order govern all aspects of the procedures
3 to be followed in making or challenging such designations and of the terms, conditions, and
4 restrictions on the use of such Confidential Business Materials.

5
6 2. Materials to be treated as Confidential Business Materials shall be designated as
7 follows:

8 a. Written discovery answers. The parties may designate written discovery
9 answers as Confidential Business Material and shall type those answers in a separate document in
10 which the cover page is marked with the following or similar legend: CONFIDENTIAL BUSINESS
11 MATERIAL PURSUANT TO PROTECTIVE ORDER, COURT FILE NO. 2:15-cv-01655-MMD-
12 VCF.
13

14 b. Other written materials. The parties may designate other written materials as
15 Confidential Business Materials and must place the above legend upon the first page of any document
16 containing information to be treated as Confidential Business Material.

17 c. Oral testimony. The parties may designate deposition testimony as
18 Confidential Business Material and shall either:
19

20 i) In advance of disclosure, state that the testimony is Confidential
21 Business Material and advise all persons present that the information is subject to this Stipulation and
22 Protective Order. The testimony shall be then separately transcribed and marked with the above
23 legend. Only those persons designated in paragraph 3 who have complied with paragraph 4, if
24 applicable, may listen to or read this testimony.

25 ii) If a designation of Confidential Business Material is not made in
26 advance of disclosure at a deposition, it may be made within 30 days following the mailing of the
27
28

1 deposition transcript by the mailing of written notice to all parties. All persons with copies of the
2 deposition transcript shall then mark their copies with the above legend. Until the 30-day period has
3 expired, all deposition testimony and transcripts shall be treated as Confidential Business Material.

4 3. If any party to whom confidential information is disclosed objects to the designation
5 of such information as "confidential" and if efforts to resolve the dispute with the disclosing party
6 fail, the objecting party shall within 45 days from receipt of the confidential designation, submit the
7 dispute to the court for resolution. Any information, the designation of which is the subject of
8 dispute, shall be treated as confidential and shall be subject to the restrictions on use of disclosure
9 contained in this order until the court resolves the dispute.
10

11 4. The failure of any party to challenge the designation of information as "confidential"
12 within 45 days of receipt of the designation shall be deemed a waiver of its right to challenge the
13 propriety of such designation.
14

15 5. Upon submission of the dispute to the court, the party claiming confidentiality of the
16 information shall have the burden of establishing that the information is of the kind for which a
17 protective order should be issued pursuant to applicable court rules. Nothing contained in this order
18 shall be deemed to waive or otherwise limit the right of either the objecting or disclosing party to
19 appeal from this court's determination of the dispute.
20

21 6. Except as set forth in this order, Confidential Business Material or the contents of
22 Confidential Business Material shall not be shown to, given to, discussed with, or otherwise disclosed
23 to any person other than:
24

25 a. Counsel of record for the parties and, to the extent such disclosure is
26 reasonably necessary, their respective partners, associates, paralegals and clerical personnel;

27 b. Persons retained or proposed to be retained as expert consultants or witnesses
28

1 and, to the extent such disclosure is reasonably necessary, their office associates and clerical
2 personnel;

3 c. Court reporters of depositions in this action;

4 d. Persons reasonably believed to have authored, received or been aware of the
5 Confidential Business Material or who are employees of the party which produced or designated the
6 Confidential Business Material, provided such persons are not given a copy of any such Confidential
7 Business Material to retain;

8
9 ~~e. The Court, provided that such materials are filed or submitted in a sealed~~
10 ~~envelope conspicuously marked: CONFIDENTIAL PURSUANT TO COURT ORDER. THIS~~
11 ~~ENVELOPE IS NOT SUBJECT TO RELEASE OR INSPECTION EXCEPT BY ORDER OF THE~~
12 ~~COURT OR UPON AGREEMENT OF THE PARTIES.~~

13
14 ~~If the Court refuses to grant any party's request to so treat Confidential Business Materials, the party~~
15 ~~may nonetheless file such material with the Court, and the filing shall not be deemed to waive any~~
16 ~~other restriction contained herein; and~~

17
18 f. Either party to the extent that it is reasonably necessary for preparation of the
19 case.

20 7. The parties and their counsel shall not disclose Confidential Business Material or the
21 contents of Confidential Business Material to any of the persons listed in paragraph 6, except for
22 Counsel, the Court and court reporters of depositions, until that person has executed and provided to
23 that Counsel an Affidavit in the form of Exhibit A, attached hereto. Copies of the executed affidavits
24 are to be provided to opposing counsel upon request and upon conclusion or final settlement of this
25 action.
26

27 8. Any person obtaining access to Confidential Business Materials or the contents thereof
28

1 of another party shall use the information contained therein only for the purposes of this action and
2 for no other purpose.

3 9. Confidential Business Materials of defendant shall be kept in separate files marked
4 "Confidential Pursuant to Court Order. Only authorized persons are allowed access."
5

6 10. Within 90 days of the conclusion or final settlement of this litigation and any appeal
7 thereof, all persons subject to the terms hereof shall, at the producing party's discretion:

8 a. destroy or assemble and return to the party who produced the Confidential
9 Business Materials, all such Confidential Business Materials, including depositions and deposition
10 exhibits designated as Confidential Business Material, and all copies thereof; and
11

12 b. destroy any outlines, summaries, abstracts, compilations, memoranda,
13 documents and the like which constitute, embody, contain, or disclose the contents of Confidential
14 Business Material; except that Counsel may retain one archival copy of court filings containing
15 Confidential Business Materials which materials will otherwise remain subject to this Stipulation and
16 Protective Order.

17 11. The terms of this Stipulation for a Protective Order shall survive and remain in effect
18 after the termination or settlement of this litigation.
19

20 12. The parties stipulate that this agreement may be presented to the Court for execution,
21 without the need for a formal motion.

22 Dated: February 18, 2016

/s/ Jonathan Owens
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27 and
28

1 Dated: February 18, 2016

/s/ Charles T. Hvass

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Attorneys for Defendants,
BUFFALO WILD WINGS, INC. and
BLAZIN WINGS, INC.

10 Dated: _____

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Attorneys for Plaintiff

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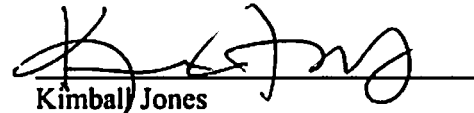
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Dated: _____

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Attorneys for Defendants,
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BLAZIN WINGS, INC.

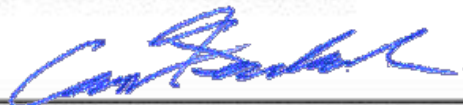
Dated: 2-16-16


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Attorneys for Plaintiff

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATED: February 19, 2016

EXHIBIT A

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CATALINA ARAMBURO LIZARRAGA) CASE NO. 2:15-cv-01655-MMD-VCF
)
Plaintiff,)
)
vs.)
)
BUFFALO WILD WINGS, INC.,)
BUFFALO WILD WINGS)
GRILL & BAR, BLAZIN WINGS, INC.,) **AFFIDAVIT**
DOE OWNER, I-V, DOE EMPLOYEE,)
DOE MAINTENANCE EMPLOYEE,)
ROE OWNER, ROE EMPLOYER,)
ROE COMPANIES, I-V,)
ROE RESTAURANT COMPANY,)
ROE CHAIR MANUFACTURER,)
ROE MAINTENANCE COMPANY,)
ROE WHOLESALER, ROE RETAILER,)
AND ROE DISTRIBUTOR,)
)
Defendants.)

The affiant being duly sworn deposes and says:


1. My Name is KIMBALL JONES and I have been retained by PLAINTIFF in this matter.
2. I have been provided by DEFENDANT's counsel with confidential documents and information produced by DEFENDANT under Protective Order.
3. I have not and will not divulge the information contained within the confidential documents to any person or entity not involved in this litigation. I have returned or will return copies of any confidential materials provided to me by DEFENDANT's counsel at the end of the litigation.

1 FURTHER, AFFIANT SAYETH NOT.

2
3 
4 Signature

5 KIMBALL JONES
6 Print Name

7 Sworn and subscribed to before me
8 this 16th day of Feb., 2016.

9 
10 Notary Public

